

1 MCGREGOR W. SCOTT
2 United States Attorney
3 JAMES R. CONOLLY
4 Assistant United States Attorney
5 501 I Street, Suite 10-100
6 Sacramento, CA 95814
7 Telephone: (916) 554-2700
8 Facsimile: (916) 554-2900
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11 Attorneys for Plaintiff
12 United States of America
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15 IN THE UNITED STATES DISTRICT COURT
16
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 2:19-MJ-154-AC

20 Plaintiff,

21
22 STIPULATION FOR EXTENSION OF TIME FOR
23 PRELIMINARY HEARING PURSUANT TO RULE
24 5.1(d) AND EXCLUSION OF TIME

25 RICARDO SAUCEDA MONTOYA,

26 DATE: May 21, 2020

27 v.
28 Defendants.

29 TIME: 2:00 p.m.

30 COURT: Hon. Deborah L. Barnes

31
32 Plaintiff United States of America, by and through its attorney of record, Assistant United States
33 Attorney James R. Conolly, and defendant Ricardo Saucedo Montoya, both individually and by and
34 through his counsel of record, Dina Santos, hereby stipulate as follows:

35 1. The Complaint in this case was filed on September 13, 2019, and defendant first appeared
36 before a judicial officer of the Court in which the charges in this case were pending on February 27,
37 2020. The court set a preliminary hearing date of April 2, 2020, which was continued to May 21, 2020.

38 2. By this stipulation, the parties jointly move for an extension of time of the preliminary
39 hearing date to June 25, 2020, at 2:00 p.m., before the duty Magistrate Judge, pursuant to Rule 5.1(d) of
40 the Federal Rules of Criminal Procedure. The parties stipulate that the delay is required to allow the
41 defense reasonable time for preparation, and for the government's continuing investigation of the case.
42 The parties further agree that the interests of justice served by granting this continuance outweigh the
43 best interests of the public and the defendant in a speedy trial. 18 U.S.C. § 3161(h)(7)(A).

1 3. To the extent it is needed, this stipulation also supplements the basis for exclusion of time
2 under General Order 611, 612, and 617, and requests that the Court also exclude time under Local Code
3 T4, for the reasons set forth below.

4 a) On April 17, 2020, this Court issued General Order 617, which suspends all jury
5 trials in the Eastern District of California scheduled to commence before June 15, 2020, and
6 allows district judges to continue all criminal matters to a date after June 1. This and previous
7 General Orders were entered to address public health concerns related to COVID-19.

8 b) Although the General Orders address the district-wide health concern, the
9 Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision
10 "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-
11 record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006).
12 "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507.
13 Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-*
14 *Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice
15 continuance must set forth explicit findings on the record "either orally or in writing").

16 c) Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as
17 both mandatory and inexcusable—General Orders 611, 612, and 617 require specific
18 supplementation. Ends-of-justice continuances are excludable only if "the judge granted such
19 continuance on the basis of his findings that the ends of justice served by taking such action
20 outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. §
21 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record
22 of the case, either orally or in writing, its reason or finding that the ends of justice served by the
23 granting of such continuance outweigh the best interests of the public and the defendant in a
24 speedy trial." *Id.*

25 d) The General Orders exclude delay in the "ends of justice." 18 U.S.C. §
26 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
27 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
28 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed

1 a two-week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United*
2 *States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible
3 for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329
4 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist
5 attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more
6 enduring, barrier to the prompt proceedings mandated by the statutory rules.

7 e) In light of the societal context created by the foregoing, this Court should consider
8 the following case-specific facts in finding excludable delay appropriate in this particular case
9 under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ The parties note that the
10 Court has already designated a new date for the continued preliminary hearing. *United States v.*
11 *Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
12 "specifically limited in time").

13 4. The parties agree that good cause exists for the extension of time, and that the extension
14 of time would not adversely affect the public interest in the prompt disposition of criminal cases.
15 Therefore, the parties request that the time between May 21, 2020, and June 25, 2020, be excluded
16 pursuant to 18 U.S.C. § 3161(h)(7)(B)(iv), Local Code T-4.

17 IT IS SO STIPULATED.

18 Dated: May 17, 2020

McGREGOR W. SCOTT
United States Attorney

19 /s/ JAMES R. CONOLLY
20 JAMES R. CONOLLY
21 Assistant United States Attorney

22 Dated: May 17, 2020

23 /s/ DINA SANTOS
24 DINA SANTOS
25 Counsel for Defendant
26 RICARDO SAUCEDA
27 MONTOYA

28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
"additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

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2 United States Attorney
3 JAMES R. CONOLLY
4 Assistant United States Attorney
5 501 I Street, Suite 10-100
6 Sacramento, CA 95814
7 Telephone: (916) 554-2700
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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
RICARDO SAUCEDA MONTOYA,
Defendant.

CASE NO. 2:19-MJ-154-AC

FINDINGS AND ORDER EXTENDING TIME FOR
PRELIMINARY HEARING PURSUANT TO RULE
5.1(d) AND EXCLUDING TIME

DATE: May 21, 2020
TIME: 2:00 p.m.
COURT: Hon. Deborah L. Barnes

The Court has read and considered the Stipulation for Extension of Time for Preliminary Hearing Pursuant to Rule 5.1(d) and Exclusion of Time, filed by the parties in this matter on July 8, 2019. The Court hereby finds that the Stipulation, which this Court incorporates by reference into this Order, demonstrates good cause for an extension of time for the preliminary hearing date pursuant to Rule 5.1(d) of the Federal Rules of Criminal Procedure.

Furthermore, for the reasons set forth in the parties' stipulation, the Court finds that the interests of justice served by granting this continuance outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). The Court further finds that the extension of time would not adversely affect the public interest in the prompt disposition of criminal cases.

THEREFORE, FOR GOOD CAUSE SHOWN:

1. The date of the preliminary hearing is extended to June 25, 2020, at 2:00 p.m.

1 2. The time between May 21, 2020, and June 25, 2020, shall be excluded from calculation
2 pursuant to 18 U.S.C. § 3161(h)(7)(A) and in light of this Court's recent General Orders.

3 3. Defendants shall appear at that date and time before the Magistrate Judge on duty.

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5 IT IS SO ORDERED.

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7 Dated: May 18, 2020

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11 DEBORAH BARNES
12 UNITED STATES MAGISTRATE JUDGE

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